

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

---

MIROSLAW GORTAT, HENRYK BIENKOWSKI,  
MIROSLAW FILIPKOWSKI, ARTUR LAPINSKI,  
JAN SWALTEK, ARTUR KOSIOREK, and HENRYK  
STOKLOSA, on behalf of themselves and on behalf of  
all others similarly situated,

Case No. 07-cv-03629  
(ILG)(SMG)

Plaintiff,

v.

CAPALA BROTHERS, INC., PAWEL CAPALA, and  
ROBERT CAPALA,

Defendants.

---

**MOTION FOR SUBSTITUTION OF COUNSEL**

**COMES NOW**, MICHAEL D. ASSAF, ESQ., of the law firm Assaf & Siegal PLLC, attorney for the Interested Party, Jennifer Capala (hereinafter, “Jennifer”), pursuant to Local Civil Rule 1.4 and hereby files a Motion for Substitution of Counsel on behalf of Jennifer. Jennifer requests that this Court allow Assaf & Siegal, PLLC (Michael D. Assaf, Esq.), 16 Corporate Woods Blvd., Albany, New York 12211 to be substituted as counsel for Interested Party, Jennifer Capala, in place of Law Offices of Gabriel Del Virginia (Gabriel Del Virginia, Esq.) and in support of this application allege as follows:

1. Jennifer retained Mr. Del Virginia to represent her interests in the instant action. However, at that time, Mr. Del Virginia was also representing the Defendant, Pawel Capala, (“Mr. Capala”) who is the ex-husband of Jennifer, in this action.
2. Over the course of time, Jennifer has lost confidence in Mr. Del Virginia and does not believe he is best suited to represent her interests going forward and Jennifer has discovered that Mr. Del Virginia is substantially conflicted in his representation as he is also representing

her ex-husband and the outcome of this litigation could have substantial affect on the Judgment of Divorce between the parties.

3. Moreover, at the present time, Jennifer is no longer able to effectively communicate with Mr. Del Virginia and the attorney-client relationship between Jennifer and Mr. Del Virginia is irretrievably broken.

4. There is a general policy favoring a party's right to representation by counsel of their choice. When the right to choose one's counsel is not absolute, any restrictions on their right to choose counsel should be carefully scrutinized.

5. The Interested Party wishes to substitute counsel for the reasons set forth above. A copy of a fully executed consent to change attorney substituting Mr. Assaf in place of Mr. Del Virginia is attached as **Exhibit "A"**.

**WHEREFORE**, the Interested Party, Jennifer Capala, respectfully request that Assaf & Siegal PLLC, Michael D. Assaf, Esq. of counsel, be substituted as counsel to represent her interests in this matter; together with all such other and further relief as to this Court may be just and proper.

Dated: April 9, 2018  
Albany, New York

ASSAF & SIEGAL PLLC

By:   
Michael D. Assaf  
16 Corporate Woods Boulevard  
Albany, New York 12211-2350  
Tel. No.: (518) 431-1000  
E-mail: [massaf@assafandsiegal.com](mailto:massaf@assafandsiegal.com)  
*Attorneys for Interested Party- Jennifer Capala*

**Certificate of Service and Certificate of Mailing**

I hereby certify that on **April 9, 2018**, I electronically filed a true and correct copy of the foregoing **MOTION FOR SUBSTITUTION OF COUNSEL** with the Clerk of the United States District Court Eastern District of New York by using the CM/ECF system and I furnished a copy of the foregoing document to the following parties in the manner of service indicated below.



Michael D. Assaf

**Via the CM/ECF system which will send a Notice of Electronic Filing to:**

- **Howard R. Birnbach**  
**hrbatlaw@aol.com**
- **John P. Campo**  
**john.campo@akerman.com**
- **Debra Kramer, Chapter 7 Trustee**  
**ajrlaw@aol.com**
- **Gabriel Del Virginia**  
**gabriel.delvirginia@verizon.net**
- **Robert W. Dremluk**  
**rdremluk@culhanemeadows.com**

- John S. Pereira, Chapter 7 Trustee  
pereiraesq@pereiralaw.com
- Sarah M. Keenan  
skeenan@sferrazzakeenan.com, jsferrazza@sferrazzakeenan.com
- Scott Michael Kessler  
scott.kessler@akerman.com, chicalendarclerk@akerman.com
- John S. Pereira, Chapter 7 Trustee  
pereiraesq@pereiralaw.com
- Avrum J. Rosen  
arosen@rkdllawfirm.com, emeade-  
bramble@rkdllawfirm.com, ddoobin@rkdllawfirm.com, sdillon@rkdllawfirm.com, louisemsta  
lker@gmail.com, fkantraw@rkdllawfirm.com, lstalker@avrumrosenlaw.com
- Randolph E. White  
rwhite@wwlawgroup.com
- Robert Wisniewski  
rw@rwapc.com, db@rwapc.com, la2@rwapc.com, office@rwapc.com